REPORT OF THE PLANNING SERVICES MANAGER - 13/239

WARDS AFFECTED: ALL

SUBJECT: REVIEW OF LOCAL VALIDATION REQUIREMENTS FOR PLANNING APPLICATIONS

RECOMMENDATION (S):

To adopt the revised local requirements for validation of planning applications, and grant officers delegated authority to amend these requirements until the next formal review takes place.

REASON FOR RECOMMENDATION (S):

To ensure that the Council has up to date validation procedures for planning applications, enabling it to make fully informed decisions on this key statutory duty.

HIGHLIGHTED RISKS:

Failure to adopt reviewed validation requirements for planning applications before 31 July 2013 would render the ‘local list’ invalid. This would significantly reduce the ability of the Council to request key information required to assess planning applications, undermining its statutory role as Local Planning Authority.

1. INTRODUCTION

1.1 Since 2008 planning (and other related) applications have been made using the standard national ‘1APP’ form available via the Planning Portal. Other
information, which is required to validate applications, is either identified as part of an associated ‘national list’, or as part of a ‘local list’ determined by the Council.

1.2 The government recently issued new regulations which require that the ‘local list’ must be reviewed before 31 July 2013 if Local Planning Authorities intend to use it as a basis for deciding whether planning applications should be validated. In addition, applicants will have a right of appeal in the event a validation dispute is not resolved. It is vital that an up to date local validation list is maintained as it is the means of obtaining essential information to assist in the determination of planning applications.

2. BACKGROUND AND ISSUES

Statutory Background

2.1 In 2010 the government issued revised guidance on information requirements and validation for planning and related applications. It stated that where local authorities wish to maintain their own distinct ‘local list’ (in addition to the ‘national list’) of information, this should be reviewed, consulted on prior to adoption. To achieve this and a consistent approach, a revised local list was consulted upon and adopted across most North Yorkshire Planning Authorities. Following consultation this was adopted in 2011.

2.2 The purpose of the validation arrangements is to:

• provide a guide to the information that may be required at the outset;
• enable the Local Planning Authority to provide applicants with certainty as to the information required;
• enable the Local Planning Authority to have all the necessary information to determine the application and to draft the planning permission and all conditions;
• minimise the need for further submission of additional information in order to allow Local Planning Authorities a reasonable opportunity to determine applications within the National Indicator targets; and,
• ensure consistency in the approach taken by different Local Planning Authorities in registering and validating applications, whilst recognising the need for variation appropriate to local circumstances.

2.4 Failure to comply with either the National or any formally adopted Local List renders a planning application incapable of being registered, and therefore invalid. The time period in which to determine planning applications only commences upon successfully meeting the relevant criteria in both the National and Local Lists. It is important that wherever possible information needed to determine a planning application is received before it is validated. Whilst it can be requested later this can cause delays, having a negative impact on achieving government targets for the proportion of applications determined within 8 or 13 weeks. The ‘national list’ includes various mandatory requirements, such as the completed application form, accurate plans and drawings of the existing/proposed development, and in certain
circumstances a Design & Access Statement. The ‘local list’ primarily consists of information, which will not be required for all applications, but in specific cases will be essential if a thorough appraisal of an application is to take place. Examples include Transport Assessments, Ecological Surveys and Drainage Assessments. Full details can be found in the revised Guidance Notes in Appendix A.

2.5 Guidance issued by the government in 2010 (‘Guidance on Information Requirements and Validation’) is still relevant. It set out 5 key principles which helped to inform the preparation of the existing adopted ‘local list’. In summary, these principles are:

- Necessity
- Precision
- Proportionality
- Fitness for Purpose
- Assistance

2.5 In 2011, the government published ‘The Plan for Growth’ which announced a programme of measures to simplify and streamline the arrangements for making and determining planning applications. This has subsequently been formalised with the publication of a range of new guidance and regulations.

2.6 The National Planning Policy Framework (March 2012) states, “Local Planning Authorities should publish a list of their information requirements for applications, which should be proportionate to the nature and scale of development proposals and reviewed on a frequent basis. Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question.”

2.7 The Town and Country Planning (Development Management Procedure) Order was amended in December 2012. From 31st July 2013 where a planning application is made on or after that date, the only validation requirements which apply to a particular planning application are the national requirements and those on a ‘Local List’ which has been published within 2 years before the planning application. In light of this, the North Yorkshire Planning Officers’ Group (NYPOG) met and concluded the Committee cycles of the various authorities render the presentation of a common report between all authorities impracticable within the above timeframe. Each individual authority is therefore undertaking its own review, but a more comprehensive joint working approach may again be used in the future.

2.9 The Town and Country Planning (Development Management Procedure) Order 2012 was further amended in May 2013. In respect of validation disputes it states, “the particulars or evidence the authority require to be included in the application — (i) are reasonable having regard, in particular, to the nature and scale of the proposed development; and (ii) are about a matter which it is reasonable to think will be a material consideration in the determination of the application”
2.10 The same Amendment Order also introduces an appeal procedure for validation disputes on ‘local list’ items, where in certain circumstances an application remains invalid after a period of 8 weeks.

**Revised Local Validation Requirements**

2.11 The entire suite of existing documents which comprises the ‘Local List of Validation Requirements’ for planning applications submitted to the Borough Council are available to view on the Council’s website at the following web address: [http://www.scarborough.gov.uk/default.aspx?page=13173](http://www.scarborough.gov.uk/default.aspx?page=13173)

2.12 They include Guidance Notes to submissions and on the terminology used in the documentation, as well as a companion guide to Biodiversity and Geological Assessments. The former document as revised is contained in Appendix A. Separate checklist documents for each type of application, of which there are 17 in total, are listed in the document in Appendix A. Appendix B contains examples of the 2 most commonly used checklists relating to full/outline planning applications and applications for householder development. The full suite of revised documents can be found at: [http://www.scarborough.gov.uk/default.aspx?page=17480](http://www.scarborough.gov.uk/default.aspx?page=17480).

2.13 The documents have been amended to take account of changes in legislation and planning policy. They were previously adapted, for example, when the National Planning Policy Framework (NPPF) replaced Planning Policy Statements. Two new checklists have also been introduced to reflect recent changes in planning legislation. One relates to those single storey rear household extensions, where the government has relaxed permitted development rights, so that planning permission is no longer required, but it is still necessary to notify the Council with certain baseline information. The other new checklist relates to a similar notification procedure, which has also been recently introduced in respect of certain temporary changes of use which no longer require full planning permission.

2.14 Officers have carefully examined the validation guidance and checklists to establish if there are aspects which could be simplified or streamlined. Indeed they have been edited in places, especially where not applicable to commonly occurring situations in the Borough, or where detailed guidance can be found elsewhere. However, there were other aspects where it was considered that the existing guidance did not adequately address certain types of information requirements. For example, as a result of the increased number of windfarm applications, Landscape and Visual Impact Assessments are now required on more applications, but these were not on the previous Local List. Changes in national and local policy in respect of affordable housing have also increased the number of applications where a viability assessment is submitted and the guidance has been amended to reflect greater experience of handling these.

2.15 In light of these changes, the overall length of the guidance has not altered significantly. However, both the guidance and the associated consultation emphasised how the Borough Council will take a proportionate approach to
validation. Thus, items from the local list will only be requested on a selective basis, where they are relevant to the proper assessment and determination of an application.

3. CONSULTATION

3.1 The consultation process concentrated on the key customers/bodies with a direct input or experience of the validation process. A consultation letter was sent to 130 agents/architects who regularly submit planning applications to the Borough Council. Likewise an email was sent to all internal and external consultees who advise the Planning Service on technical matters (e.g. transport, drainage, environmental health etc). A direct link to the revised validation documents on the Council website was provided. The consultation period lasted 3 weeks and expired on 26 June 2013.

Responses from Consultees

3.2 The following consultation responses have been received:

3.2.1 Sport England - attach a copy of their own consultation guidance checklist, when frequently consulted by local planning authorities on their validation checklists. Reference is also made to a development control guidance note, which sets out basic requirements for validation checklists.

3.2.2 Civil Aviation Authority – provide guidance on the types of applications where they should be consulted.

3.2.3 Natural England – have no comments on the main guidance document, but have suggested amendments to the Appendix: Biodiversity and Geological Assessments. Some minor changes/additions to the text are suggested, including reference to Natural England’s Standing Advice on Protected Species and its pre-application advice service.

3.2.4 English Heritage – Overall, the document sets out the relevant information which will be required for the Council to assess adequately the likely implications of proposed developments on historic assets. The final version of the document should reflect that planning applications involving demolition of a building in a Conservation Area will no longer require Conservation Area consent [NB planning permission will instead be required].

3.2.5 SBC Environmental Health – no comments on the guidance on air quality, but some minor amendments are suggested to the section on contaminated land.

3.2.6 SBC Housing - agree with the requirements for affordable housing statements and viability assessments.

3.2.7 SBC Parks & Countryside (Trees) – additional wording has been provided to clarify the information required from applicants with respect to applications which may affect trees.
Responses from Agents and Architects

3.3 The following consultation responses have been received:

3.3.1 Mr R. Green – Some applications seem to fall well below basic requirements. A confused approach is what we currently have at the moment.

3.3.2 Hayes Associates - the process does not function as well as it did when there were very few validation requirements and the complexity is not backed up with resources, so the whole system is binding rather than running.

There is no mention of percolation tests, which have been given as a reason on a number of projects as a reason for non-validation. Percolation tests are seasonal which cannot be carried out when the ground is frozen and led to great difficulties on a recent application. They also can pass the test when the ground water is low, even though soakaways will not be effective when the water table is high. Where there are seasonal effects on validation requirements, bat surveys, percolation tests etc., these should be put forward for conditions and not stop validation. Otherwise the planning process is held up, when the many other aspects are not being considered. Having determined the flood risk, the planning authority should leave drainage to Building Control and Yorkshire Water.

3.3.2 Mr C. Dent - Concerns are raised regarding the validation system, which only serves to delay applications.

3.3.3 Mr M. Paxton - My main concern is the amount of information required at the time of application and which is then subsequently also conditioned in the approvals. This creates a large amount of expense for the client in putting forward this information prior to obtaining approval. As an example, I am presently preparing a planning application that you suggest require a large amount of information around drainage, contamination, bat survey etc. These then will be subsequently conditioned to show that they are still current for when project starts on site. A lot of this information can be just conditioned when the planning approval is obtained. This would give the client then the reassurance that although planning was obtained they still need to supply the requested information before starting on site. This would cut out a large risk in the cost for the client and also it would expedite the length of time of the planning process. I have a number of clients who are reluctant to proceed on some of the larger schemes because of the financial risk. Whereas it is probably easier for larger developers to accept this risk I have found, in my experience, that it is more difficult for the single client.

4. ASSESSMENT

4.1 Validation procedures play a vital role in the Local Planning Authority’s role in determining planning applications. They ensure that sufficient information is received for the Council to decide whether a planning application shall be
approved or refused on the basis of planning policy and other material considerations. In many instances, the information requested as a result of the Local List is detailed information relating to matters such as transport, ecology or drainage, which is required for technical consultees to make a clear recommendation.

4.2 Failure to review and adopt revised validation procedures before 31 July 2013 (or every 2 years thereafter) would severely hamper the efficient and effective operation of the Planning Service. It would reduce the power to request information prior to the application being considered on some fundamental issues – for example the Local List contains some key documentation such as Transport Assessments or Flood Risk Assessments. An application could still be refused due to insufficient information, but this is an unsatisfactory way to proceed, particularly where the submission of such information would demonstrate that a development would be acceptable. Requesting information after the 8 or 13 week target period has started would also be problematic. It would cause delays, significantly increasing the proportion of applications exceeding the target periods for key Performance Indicators used by the government assess the effectiveness of Local Planning Authorities, and in extreme circumstances, could lead to the Council losing powers to determine major applications.

4.3 The consultation responses have been carefully considered by officers. The responses from technical consultees largely relate to detailed guidance which can easily be incorporated. One area where there was a lack of guidance on the Council website is information needed to assess trees. Since it is of a relatively detailed nature it is the intention to include a section on this within the Appendix which currently relates to biodiversity and geological conservation.

4.4 The comments received from agents and architects largely relate to the amount of information now required to validate an application. To an extent this reflects the way in which remit of what is a ‘material planning consideration’ has broadened over the last 20 years. For example, the extent to which the Local Planning Authority can consider matters such as drainage, design, biodiversity or socio-economic matters has significantly increased and they are all issues which the government (through the NPPF) indicates must be taken into consideration. In order that they can be objectively assessed this often requires a professionally prepared report, the cost for which is borne by the developer.

4.5 It is emphasised that none of the items on the Local List is mandatory for all applications. The guidance notes seek to help applicants and their agents as to what information may be required for a specific application. However, ultimately it is judgment which has to be made by officers on a case by case basis, taking account of the particular circumstances relating to the site/proposal and 5 key principles relating to validation set out by the government (see paras. 2.5 and 2.9 above).
4.6 On a specific point raised by one agent, the Guidance has now been amended to indicate a percolation test may be required as part of the drainage information where a soakaway is proposed in a Drainage Sensitive Area. Concern is raised by agents is that information is required for validation, on matters such as drainage, or on protected species surveys, when it could be addressed by attaching a condition to a planning permission. A condition alone may be suitable in certain instances, but often it is important that information is received earlier since it is essential to enable the Council to make fully informed decision. Government guidance is clear that a condition should not be imposed if the restriction effectively nullifies the benefit of the permission. This, however, could be affect if a condition is imposed the result of which is that development cannot proceed due to an unacceptable impact on protected species which has only been found to exist after planning permission has been granted, or proposed mitigation against flood/drainage impact is insufficient to prevent a net worsening in an area with existing problems. For these reasons, it is often the case this information has to be requested before an application is validated.

4.7 Officers are aware that especially on some smaller schemes the amount of information required for validation may seem daunting. In the case of information on the national list, this is normally mandatory, but for items on the local list officers are happy to agree what information is genuinely required at the pre-application stage, which unlike guidance on the planning merits is not in itself subject to any charge. Such dialogue should help to explain to agents (and their clients) why information is required in a specific case, and would hopefully avoid dispute (now possibly leading to appeal) at a later stage.

4.8 The recommendation for this report not only seeks Committee approval to adopt the revised validation requirements. It also seeks to grant officers delegated authority to make further minor amendments in the period between this and the next significant review, which under current legislative requirements would take place in 2 years time. The government has recently issued numerous changes to legislation and guidance which have a bearing on validation. For example, forthcoming changes to for demolition of non-listed buildings in Conservation Area have received Royal Assent, but are awaiting a date for implementation. For the reasons set out in this report, it is vital that the criteria are kept up to date and relevant without reference back to committee on each occasion.

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Background Papers:

Appendix 1: Application Validation Guidance Note
Appendix 2: Validation Checklists for Outline or Full Planning Permission and for Householder Development

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT HUGH SMITH ON 01723 383642, e-mail hugh.smith@scarborough.gov.uk